IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

THURSDAY, THE 15TH NOVEMBER 2007 / 24TH KARTHIKA 1929

WP(C).No. 29493 of 2004(J)

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PETITIONER:

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1. THOMAS MATHEW, S/O.MATHEW,
   VATTAKKUZHI HOUSE, AGED 64, DOOR NO.3/186,
   CHEMBUMUKKU, VAZHAKKALA VILLAGE,
   KANAYANNUR TALUK, ERNAKULAM DISTRICT.

2. TONO THOMAS, S.O.THOMAS MATHEW,
   AGED 35, DOOR NO.3/186, CHEMBUMUKKU, VAHZHAKKALA
   VILLAGE, KANAYANNUR TALUK, ERNAKULAM.
   REP. BY HIS FATHER P.A.HOLDER THOMAS MATHEW.

BY ADV. SRI.KKM.SHERIF
SRI.LAL K.JOSEPH
SRI.A.A.ZIYAD RAHMAN
SMT.K.K.RATNALATHA
SMT.K.A.CIJILA

RESPONDENTS:

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1. THE STATE OF KERALA, REP. BY THE
   SECRETARY, THE DEPARTMENT OF REVENUE,
   THIRUVANANTHAPURAM.

2. THE DISTRICT COLLECTOR, ERNAKULAM.

3. THE SPECIAL TAHSILDAR(RR), ALUVA.

4. C.H.MOHAMMED BASHIR, S/O.HASSAN PILLAI,
   CHENAPARAMBIL HOUSE, PUTHUVASSERY HOUSE,
   CHENGAMANADU TALUK, NOW R/A. 4TH FLOOR,
   R.D.S.RETREAT, CHITTOOR ROAD, ERNAKULAM.

5. POPATLAL SOMNATH SHAH, JAWAHAR NAGAR,
   GOREGOAN (WEST) MUMBAI 400 062.

6. HEMEN.V.SETH, S/O.LATE VINAYAKANT
   BHIKALA, SHETH, 5TH FLOOR, 14, MAHAVIR SAGAR,
   PLOT NO.32-33, GARODIA NAGAR, CHATGOPER (E)
   MUMBAI 400 077.

R4 BY ADV. SRI.MVS.NAMBOOTHIRY
R1 TO 3 BY GOVERNMENT PLEADER SMT.SMITHA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 15/11/2007, THE COURT ON 15/11/2007 DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

P1: TRUE COPY OF POWER OF ATTORNEY DT.5.10.2004.

P2: TRUE COPY OF SALE DEED DT.7.9.99.

P3: TRUE COPY OF SALE DEED DT.9.6.2003.

P4: TRUE COPY OF LEASE DEED DT.1.12.99.

P5: .DO. DT.1.8.2004.

P6: TRUE COPY OF G.O.(RT)NO.1613/2001/RD DT.1.8.2001.

P7: TRUE COPY OF COMMUNICATION DT.6.11.2001.

P8: TRUE COPY OF COVERING LETTER DT.10.8.2004 ISSUED BY M/S.KERAFIL PLASTICS FOR SENDING DEMAND DRAFT TO EPF ORGANIZATION.

P8(a): TRUE COPY OF RECEIPT ISSUED BY STATE BANK OF INDIA EVIDENCING PAYMENT TOWARDS EPF DT.10.8.04.

P8(b): TRUE COPY OF CLEARANCE CERTIFICATE ISSUED BY KFC DT.19.11.98.

P8(c): .DO. BY DISTRICT INDUSTRIES CENTRE DT.10.8.04.

P8(d): TRUE COPY OF ORDER PASSED BY DEBT RECOVERY TRIBUNAL DT.13.2.98.

P9: TRUE COPY OF NOTICE DT.6.11.2003 ISSUED BY ESI CORPORATION.

P10: TRUE COPY OF ORDER DT.27.11.2003 IN WPC 37396/2003.

P11: TRUE COPY OF OBJECTION DT.29.9.2004.

RESPONDENT'S EXHIBITS:

R4(a): TRUE COPY OF JUDGMENT IN W.P. 37396/2003.

TRUE COPY

PA TO JUDGE

C.N.RAMACHANDRAN NAIR, J.

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W.P.(C) No.29493 of 2004

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Dated this the 15th day of November, 2007.

JUDGMENT

The petitioners are challenging recovery proceedings in the form of attachment effected over the 38.750 cents of property purchased by the petitioners from respondents 4 to 6 for recovery of arrears of sales tax and motor vehicle tax. Respondents 4 to 6 were partners of a firm by name Kerafil Plastics which had liabilities under various heads such as ESI contribution, liability due to KFC, tax arrears etc. The property in question was also mortgaged to financial institutions towards security for loan availed. The property was attached and notified for sale in recovery proceedings in the year 1983. However, since there was no purchaser, Government purchased the property for ten paise. Several years after this, the defaulters approached the Government for reconveyance of the property simultaneously undertaking to clear the arrears in consideration thereof. Government vide Ext.P6 order ordered reconveyance of the property subject to the condition that the entire arrears due from the defaulters will be cleared by them with interest upto date as calculated by the District Collector, Ernakulam. It is conceded by both sides that all arrears except

sales tax arrears and motor vehicle tax arrears were cleared by the defaulters. However, ESI arrears stands cancelled vide Ext.R4(a) judgment of this court. The arrears of sales tax and motor vehicle tax together constitute around Rs.2,70,000/-. The petitioners' case is that as on date of purchase of property i.e. 9.6.2003, the defaulters had cleared the liabilities in terms of Ext.P6 and there was no mention about the sales tax or motor vehicle tax liability in Ext.P6. I do not think the contention of the petitioners could be sustained because Ext.P6 is a conditional order and unless liability certified by the District Collector is cleared by the defaulters, Ext.P6 cannot be enforced. In other words, defaulters will get title back in the form of reconveyance only on clearing the arrears certified by the Collector. The District Collector does not appear to have issued any proceedings pursuant to Ext.P6. However, I do not think the inaction of the Collector in the matter should lead to loss to the petitioners, more so, when the other liabilities are settled by respondents 4 to 6. Further, it is seen that the Revenue officials were indifferent about recovery of sales tax and other dues due to the Government because after purchasing the property in 1983 for nearly 18 years, Government did nothing to dispossess the defaulters or to sell the property or to clear the arrears due to various agencies including financial institutions. Instead, Government agreed to reconvey the property

to defaulters on their clearing the arrears. Moreover, even after defaulters did not remit the arrears of sales tax and motor vehicle tax, no action was taken for three years after Ext.P6 was issued. In the circumstances, I feel delay in recovery is substantially attributable to Revenue officials. Even though property is in the name of the Government after it's purchase, the Sub Registrar registered sale deed in favour of the petitioners without getting a clearance certificate from the District Collector in terms of Ext.P6. Obviously petitioners' claim that they are bonafide purchasers who purchased the property on payment of full consideration without being aware of the liability towards sales tax and motor vehicle tax appears to be genuine. In the circumstances and in the interest of justice I dispose of the W.P. directing the third respondent to lift the attachment, if petitioners clear the arrears of sales tax and motor vehicle tax with equal amount towards interest and without payment of any other charges including collection charges on or before 31.12.2007.

C.N.RAMACHANDRAN NAIR
Judge

pms